

# **Report of the Local Boundary Commission to the Second Session of the Twenty-Third Alaska State Legislature**

## **Local Boundary Commission**

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Robert Harcharek, Member  
Anthony Nakazawa, Member

## **Frank Murkowski, Governor**

Report prepared with assistance from:

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## Message from the Chair

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January 21, 2004

On behalf of the members of the Local Boundary Commission, I am pleased to present this report of the Commission to the Second Session of the Twenty-Third Alaska State Legislature.

Chapter 1 provides background information on the Local Boundary Commission.

Chapter 2 describes activities of the Commission and its staff during 2003, including the Commission's disposition of a petition to incorporate a city in Gustavus. The work of the Commission and the Department of Education and Early Development to address school consolidation issues as requested by the State Legislature is also addressed in Chapter 2. Additionally, Chapter 2 describes several proposals currently under consideration by municipalities and voters throughout Alaska.

Chapter 3 contains a discussion of vital public policy issues of particular interest to the Commission. These include the following matters:

- Concerns regarding elimination of longstanding ambiguities in existing law regarding when newly incorporated, annexed, and detached properties are subject to municipal property taxes. The Commission urges the adoption of those provisions (i.e., Sections 3 and 5) of CSSB 63(STA) that accomplish that elimination.
- Concerns relating to proposed changes to laws governing merger and consolidation of municipal governments. HB 38 and HB 363 are counter to the Constitutional principles of minimizing local government units and tax levying jurisdictions and repudiate the principles of representative government. The Commission opposes these bills.
- Concerns relating to substantial disincentives hindering borough incorporation and annexation and impeding the proper development of local government in Alaska. In that context, the Commission respectfully urges the Legislature to promote borough incorporation and annexation in those areas that have the human and financial resources to support local government operations.

There were no local boundary changes approved by the Commission in 2003 that require legislative review under Article X, Section 12 of the Alaska Constitution.

The Commission respectfully invites the Legislature to consider the account of activities and issues addressed in this report.

Cordially,

A handwritten signature in dark ink, appearing to read "Darroll Hargraves". The signature is written in a cursive, flowing style. To the right of the signature is a small, rectangular, black and white graphic element consisting of vertical lines of varying heights, resembling a barcode or a stylized stamp.

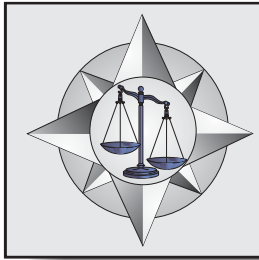
Darroll Hargraves  
Chair



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# CHAPTER 1

## BACKGROUND & PROCEDURES

### Background on the Local Boundary Commission

#### Constitutional Origin of the Local Boundary Commission

The framers of Alaska's constitution subscribed to the principle that, "unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution." (Victor Fischer, *Alaska's Constitutional Convention*, p. 124.) The framers recognized that a "grave need" existed when it came to the establishment and alteration of municipal governments by providing for the creation of the Local Boundary Commission (LBC or Commission) in Article X, Section 12 of the constitution.<sup>1</sup>

The LBC is one of only five State boards or commissions established in the Constitution (among a

current total of approximately 120 active boards and commissions).<sup>2</sup> The Alaska Supreme Court characterized the framers' purpose in creating the LBC as follows:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

... lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.

*Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962).

#### Duties and Functions of the LBC

The LBC acts on proposals for seven different municipal boundary changes. These are:

- incorporation of municipalities;<sup>3</sup>

<sup>1</sup> Article X, Section 12 states, "A local boundary commission or board shall be established by law in the executive branch of state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

<sup>2</sup> The other four are the Commission on Judicial Conduct, the Judicial Council, the University of Alaska Board of Regents, and the (legislative) Redistricting Board.

<sup>3</sup> The term "municipalities" includes both city governments and borough governments.

- ➡ reclassification of city governments;
- ➡ annexation to municipalities;
- ➡ dissolution of municipalities;
- ➡ detachment from municipalities;
- ➡ merger of municipalities; and
- ➡ consolidation of municipalities.

In addition to the above, the LBC has a continuing obligation under statutory law to:

- ➡ make studies of local government boundary problems;
- ➡ adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution; and
- ➡ make recommendations to the Legislature concerning boundary changes under Article X, Section 12 of Alaska's constitution.

Further, the LBC is routinely assigned duties by the Legislature; e.g., the 2002 requirement to study the unorganized borough and determine which areas meet borough incorporation standards and the 2003 directive to work with the

Department of Education and Early Development regarding school district consolidation.

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### **LBC Decisions Must Have a Reasonable Basis and Must Be Arrived at Properly**

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LBC decisions regarding petitions that come before it must have a reasonable basis. That is, both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must have a rational foundation.<sup>4</sup>

The LBC must, of course, proceed within its jurisdiction; conduct a fair hearing; and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law or if its decision is not supported by the evidence.

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### **Communications with the LBC**

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When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds

the right of everyone to due process and equal protection.

Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly pre-

<sup>4</sup> See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis; *Lake and Peninsula Borough v. Local Boundary Commission*, 885 P.2d 1059, 1062 (Alaska 1994); *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97-8 (Alaska 1974). Where an agency action involves formulation of a fundamental policy the appropriate standard on review is whether the agency action has a reasonable basis; LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if the court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence; *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183 nn. 7 and 8 (Alaska 2000); see also *Matanuska-Susitna*



serves rights to due process and equal protection. To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon the filing of a petition and remains in place through the last date available for the Commission to reconsider a decision. If a decision of the LBC is appealed to the court, the limitation on *ex parte* contact is extended throughout the appeal in the event the court requires additional consideration by the LBC.

In that regard, all communications with the Commission must be submitted through staff to the Commission. The LBC staff may be contacted at the following address, telephone number, facsimile number, or e-mail address:

Local Boundary Commission  
Staff  
550 West Seventh Avenue,  
Suite 1770  
Anchorage, Alaska 99501-3510  
Telephone: (907) 269-4559  
Fax: (907) 269-4539  
Alternate fax: (907) 269-4563  
E-mail: LBC@dced.state.ak.us

### LBC Membership

The LBC is an independent, quasi-judicial commission. Members of the LBC are appointed by the Governor for five-year overlapping terms. (AS 44.33.810.)

Notwithstanding their terms, members of the LBC serve at the pleasure of the Governor. (AS 39.05.060(d).)

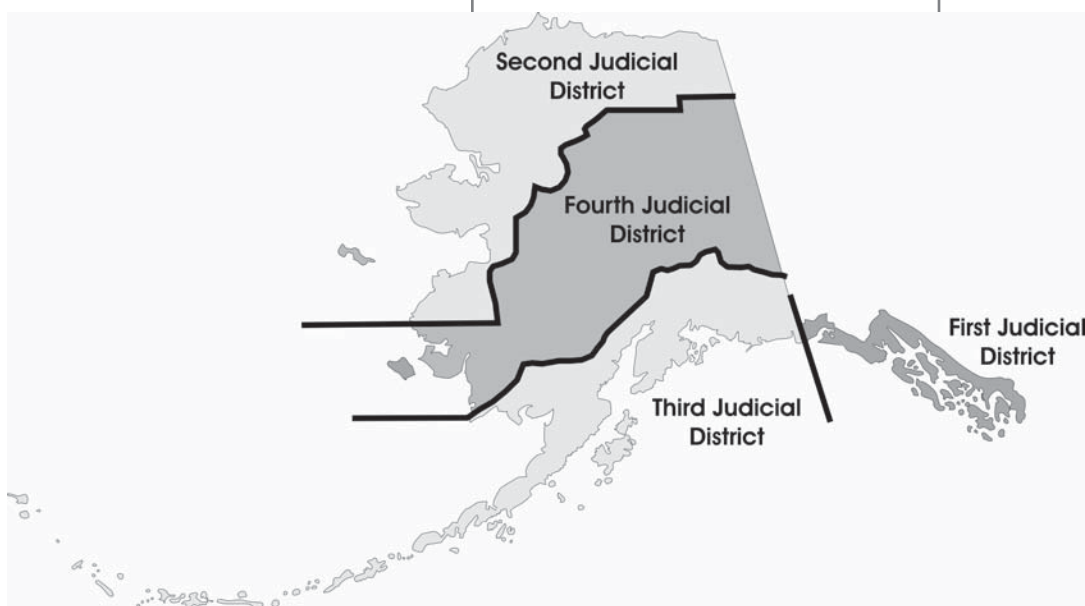
The LBC is comprised of five members. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state at-large.

State law provides that members of the LBC must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060.)

LBC members receive no pay for their service on the Commission. However, they are entitled to the

travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

The following is a biographical summary of the current members of the LBC.



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**Darroll Hargraves, Chair, At-Large Appointment, Wasilla**

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Darroll Hargraves of Wasilla was appointed Chair of the LBC by Governor Murkowski in March 2003. Commissioner Hargraves holds a Masters degree and an Education Specialist degree from the University of Alaska, Fairbanks. Additionally, Oakland City University awarded him the Doctor of Humane Letters. Commissioner Hargraves has been School Superintendent in Nome, Ketchikan, and Tok. He was the Executive Director of the Alaska Council of School Administrators from 1998 to 2002. He is currently a management/communications consultant working with school districts and nonprofit organizations. Commissioner Hargraves previously served as Chair of the LBC from 1992-1997. His current term on the Commission expires on January 31, 2008.



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**Georgianna Zimmerle, First Judicial District, Ketchikan**

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Georgianna Zimmerle serves from the First Judicial District. She is a resident of Ketchikan. Commissioner Zimmerle was appointed to the Commission on March 25, 2003. An Alaska Native, Commissioner Zimmerle is Tlingit and Haida. She is currently the General Manager for Ketchikan Indian Community. She worked for the Ketchikan Gateway Borough for 27 years, serving five years as the Borough Manager and 22 years in the Borough Clerk's Office. Her current term on the Commission expires January 31, 2006.

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**Robert Harcharek, Second Judicial District, Barrow**

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Robert Harcharek serves from the Second Judicial District. He was appointed to the LBC on July 18, 2002. Commissioner Harcharek has lived and worked on the North Slope for more than 20 years. He has been a member of the Barrow City Council since 1993 and a member of the North Slope Borough School Board since 1999. He is a Senior Planner and Social Science Researcher for the North Slope Borough Planning Department. Commissioner Harcharek earned a Ph.D in International and Development Education from the University of Pittsburgh in 1977. He has served as North Slope Borough Capital Improvement Projects and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center, Socio-cultural Scientist for the North Slope Borough Department of Wildlife Management, Director of Technical Assistance for Upkeagvik Inupiat Corporation, and Dean of the Inupiat University of the Arctic. Commissioner Harcharek served for two years as a Peace Corps Volunteer in Thailand and was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He is a member of numerous boards of directors, including the Alaska Association of School Boards and the Alaska Municipal League Legislative Committee. His current term on the Commission expires on January 31, 2004.



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**Robert Hicks, Vice-Chair, Third Judicial District, Seward**

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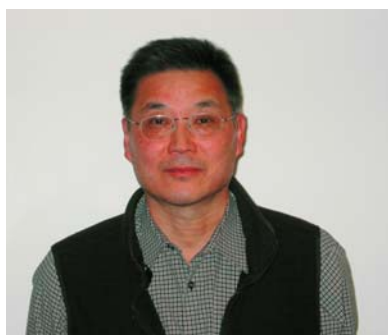
Robert Hicks of Seward was appointed to the LBC from the Third Judicial District by Governor Murkowski in March 2003. His fellow Commissioners elected him Vice-Chair of the LBC. Commissioner Hicks is a graduate of Harvard Law School. From 1972 - 1975, he served as Executive Director of the Alaska Judicial Council. He practiced law in Alaska from 1975 - 2001. One of the areas in which he specialized as an attorney was the field of local government, including the LBC. Since 2001, Commissioner Hicks has served as the Director of Corporate Affairs and the Dive Officer at the Alaska SeaLife Center in Seward. He also is an Adjunct Instructor in Alaska Outdoor and Experiential Education at the University of Alaska in Anchorage. Commissioner Hicks' current term on the LBC expires on January 31, 2007.



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**Dr. Anthony Nakazawa, Fourth Judicial District, Fairbanks**

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Anthony “Tony” Nakazawa serves from the Fourth Judicial District and is a resident of Fairbanks. He was appointed to the LBC on February 14, 2003. Commissioner Nakazawa is employed as the State Director of the Alaska Cooperative Extension Service, USDA/University of Alaska Fairbanks, which includes district offices in ten communities throughout Alaska. He previously served as the director of the Division of Community and Rural Development for the Alaska Department of Community and Regional Affairs under Governor Walter J. Hickel. Commissioner Nakazawa, an extension economist and UAF professor, has been with the Cooperative Extension Service since 1981 and with the Hawaii Cooperative Extension system in 1979-1980. From 1977-1979, he served as the Economic Development Specialist for the Ketchikan Gateway Borough. His past activities include board service with the Alaska Rural Development Council, RurAL CAP, Alaska Job Training Council, and Asian-Alaskan Cultural Center. Commissioner Nakazawa received his B.A. in economics from the University of Hawaii Manoa in 1971, and his M.A. in urban economics from the University of California Santa Barbara in 1974. He received his M.S. (1976) and Ph.D. (1979) in agriculture and resource economics from the University of California Berkeley. His current term on the Commission expires December 21, 2004.

## Staff to the Commission

The Alaska Department of Community and Economic Development (DCED), Division of Community Advocacy (DCA) provides staff to the Commission.

## Constitutional Origin of the Local Government Agency

As noted in the preceding discussion regarding the background of the LBC, the framers of Alaska's Constitution followed a principle that no specific agency, department, board, or commission would be named in the constitution "unless a grave need existed" for such. In addition to the previously noted five boards and commissions named in the constitution, the framers provided for only one State agency or department – the local government agency mandated by Article X, Section 14 to advise and assist local governments.<sup>5</sup> The constitutional duty to support local governments is entrusted to DCED.<sup>6</sup> Within DCED, the DCA carries out the duty to advise and assist local governments.

It is worth reflecting that of the six boards, commissions, and agencies mandated by Alaska's Constitution, two deal with the judicial branch, one deals with the legislative branch, one deals with the University of Alaska, and the remaining two – the LBC and the local government agency – deal with local governments. The prominence that the framers of Alaska's constitution gave to the LBC and the local government agency reflects the framers' strong conviction that successful implementation of the local government principles laid out in the constitution was dependent, in large part, upon those two entities. The framers recognized that deviation from the constitutional framework for local government would have significant detrimental impacts upon the constitutional policy of maximum local self-government. Further, they recognized that the failure to properly implement the constitutional principles would result in disorder and inefficiency in terms of local service delivery.

## DCED Serves as Staff to the LBC



DCED serves as staff to the LBC pursuant to AS

44.47.050(a)(2). DCED's duties as LBC staff are carried out by the DCA Municipal Policy and Research Section.

DCED is required by AS 29.05.080 and 3 AAC 110.530 to investigate each municipal incorporation proposal and to make recommendations regarding such to the LBC. As previously noted, LBC decisions must have a reasonable basis (i.e., a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding). Accordingly, DCED adopts

<sup>5</sup> Article X, Section 14 states, "An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

<sup>6</sup> AS 44.33.020 provides that DCED "shall (1) advise and assist local governments."



the same standard for itself in developing recommendations regarding matters pending before the LBC. That is, DCED's self-imposed standard requires its recommendations to the LBC to be based on a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding. DCED takes the view that due process is best served by providing thorough, credible, and objective analysis of every municipal boundary proposal to come before the LBC.

DCED's Commissioner, Deputy Commissioners, and the Director of DCA provide policy direction concerning recommendations to the LBC.

DCED's recommendations to the LBC are not binding on the LBC. As noted previously, the LBC is an independent commission. While the Commission is not obligated to follow DCED's recommendations, it has, nonetheless, historically considered DCED's analyses and recommendations to be critical components of the evidence in municipal boundary proceedings. Of course, the LBC considers the entire record when it renders a decision.



*DCED staff listening to resident concerns during a recent informational meeting.*

DCED staff also deliver technical assistance to municipalities, residents of areas subject to impacts from existing or potential petitions for creation or alteration of municipal governments, petitioners, respondents, agencies, and others.

Types of assistance provided by DCED staff include:

- conducting feasibility and policy analysis of proposals for incorporation or alteration of municipalities;
- responding to legislative and other governmental inquiries relating to issues on municipal government;
- conducting informational meetings;

- providing technical support during Commission hearings;
- providing technical support during Commission meetings;
- drafting decisional statements;
- implementing decisions of the Commission;
- certifying actions;
- maintaining incorporation and boundary records for each of Alaska's 161 municipal governments;
- drafting reports, correspondence, public notices, legislation, or regulations as requested by the Commission;
- coordinating, scheduling, and overseeing public meetings and hearings for the Commission;

- developing orientation materials and providing training for new Commission members;
- maintaining and preserving Commission records in accordance with the public records laws of the State;
- developing and updating forms and related materials for use in municipal incorporation or alteration; and
- if directed by the Commission, act as a petitioner on a matter that the Commission believes will promote local government standards in the Alaska Constitution, AS 29.04, AS 29.05, or AS 29.06.

Given other DCED work assignments, there are less than two full-time equivalent positions assigned to work on Commission matters.

## Procedures of the Commission

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely, and inexpensive determination of every proposal to come before the Commission. The procedures are also intended to ensure that decisions of the

Commission are based on analysis of the facts and the applicable legal standards, with due consideration of the positions of interested parties. The procedures include extensive public notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the Commission, and opportunity for reconsideration by the Commission. A summary of the procedures follows.

### Preparation and Filing of the Petition

DCED offers technical assistance, sample materials, and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of prospective proposals. DCED routinely advises petitioners to submit petitions in draft form in order that potential technical deficiencies relating to petition form and content may be identified and corrected prior to circulation of the petition for voter signatures or formal adoption by a municipal government sponsor.

Once a formal petition is prepared, it is submitted to DCED for technical review. If the petition contains all the information required by law, DCED accepts the petition for filing.

### Public Notice and Public Review

Once a petition is accepted for filing, extensive public notice is given. Interested parties are typically given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is typically provided at least two weeks to file one brief in reply to responsive briefs.

### Analysis

Following the public comment period, DCED analyzes the petition, responsive briefs, written comments, reply brief, and other materials as part of its investigation. The petitioner and DCED may conduct informational meetings. At the conclusion of its investigation, DCED issues a preliminary report for public review and comment. The report includes a



*The LBC listening to testimony at a recent hearing.*

formal recommendation to the LBC for action on the petition.

The preliminary report is typically circulated for public review and comment for a minimum of four weeks. After reviewing the comments on its report, DCED issues its final report. The final report includes a discussion of comments received on the preliminary report and notes any changes to DCED's recommendations to the Commission. The final report must be issued at least three weeks prior to the hearing on the proposal.

### **Commission Review of Materials and Public Hearings**

Members of the Commission review the petition, responsive briefs, written comments, reply brief, and DCED reports. If circumstances permit, Commission members also tour the area at issue prior to the hearing in order to gain a better understanding of the area. Following extensive public notice, the Commission conducts at least one hearing in or near the affected territory.

The Commission must act on the petition within ninety days of its final public hearing.

The Commission may take any one of the following actions:

- approve the petition as presented;
- amend the petition (e.g., expand or contract the proposed boundaries);
- impose conditions on approval of the petition (e.g., voter approval of a proposition authorizing the levy of taxes to ensure financial viability); or
- deny the petition.

The law requires the Commission to reach a decision within ninety days of its hearing. However, the Commission typically renders its decision within a few days of the hearing. Within thirty days of announcing its decision, the Commission must adopt a written statement setting out the basis for it. Copies of the statement are provided to the petitioner, respondents, and others who request it. At that point, the decision becomes final, but is subject to reconsideration. Any party may ask the Commission to reconsider its decision. Such requests must be filed within twenty days of the date that the decision became final. If the Com-



mission does not approve a request for reconsideration within thirty days of the date that the decision became final, the request for reconsideration is automatically denied.

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### **Implementation**

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If the Commission approves a petition, the proposal is typically subject to approval by voters or the legislature. A petition that

has been granted by the Commission takes effect upon the satisfaction of any stipulations imposed by the Commission. The action must also receive favorable review under the Federal Voting Rights Act. DCED provides assistance with Voting Rights Act matters.

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